

REMARKS

This is a full and timely response to the non-final Official Action mailed January 5, 2005. Reconsideration of the application in light of the above amendment and the following remarks is respectfully requested. By the foregoing amendment claim 5 has been canceled, new claim 12 has been added, and claim 11 has been added. Thus, claims 2, 4, 5, 11 and 12 are pending in this application, and claims 2, 5 and 11 have been rejected. Claim 4 has been allowed. Support for the amendments is found in the originally filed specification and claims.

Rejection – 35 U.S.C. § 103

The Office has rejected claims 2 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Admitted Prior Art (APA) or EP '017 in view of Yang et al. and Hawtof et al. In particular, the Office rejected the claims because “it would have been obvious to one of ordinary skill in the art to construct or provide the buffer tubes of the APA or EP '017 out of an alloy of polypropylene and polyphenylene oxide in view of the teachings of Yang et al. and Hawtof et al.” Office Action, pages 2-3, paragraph 2. The Office asserts that Yang et al. provides the suggestion or motivation to combine the references, which is to “us[e] an alloy of different polymers as materials for buffer tube construction to provide better mechanical and electrical properties.” Office Action, page 3, paragraph 2. Applicant respectfully traverses the rejections.

The Office has not shown that either reference provides a suggestion or motivation to combine the references, and thus has not established a prima facie case of obviousness. See M.P.E.P. § 2143. In particular, the Office has not shown that Yang et al. suggests combining the polyphenylene oxide fiber data storage medium coating of Hawtof et al. with the polypropylene-polyethylene buffer tube material of Yang et al. to be used in the buffer tubes of the APA or EP '017.

First, the Office has not shown that one of ordinary skill in the art of using and making buffer tubes would have been motivated to combine Hawtof et al. with Yang et al. Yang et al. relates to a “polypropylene-polyethylene copolymer core or buffer tube” (column 1, lines 9-11), but Hawtof et al. relates to “optical fibers which include a data storage medium capable of being digitally encoded with a data signal” (column 1, lines 9-11). Using and making *buffer tubes* for optical fiber cables is a different field of endeavor than using and making *optical fibers* having a data storage medium capable of being digitally encoded with a data signal. Thus, one of skill in the art of using and making *buffer tubes* would not have been motivated to look to Hawtof et al., which says nothing of *buffer tubes*.

Second, the Office has not particularly pointed out a motivation or suggestion in Yang et al. that would motivate one of skill in the art to combine the polyphenylene oxide (PPO) of Hawtof et al. with the polypropylene-polyethylene (PP-PE) buffer tubes of Yang et al. The Office alleges Yang et al. provides the motivation “for using an alloy of different polymers as materials for buffer tube construction to provide better mechanical and electrical properties,” (see Office Action, page 3, paragraph 3), but the Office does not indicate where in Yang et al. this motivation is found. The Office also does not explain why one of skill in the art of buffer tubes for *optical fiber* cables would be concerned with *electrical* properties of polymers. One of ordinary skill in the art understands that electrical properties are of concern in copper coaxial and electrical cables, but not in optical fiber cables. Applicant respectfully requests the Examiner to particularly point out, such as by column and lines, where in Yang et al. is the alleged motivation to combine.


Furthermore, the Office has not pointed out a particular motivation in Yang et al. that would lead one of ordinary skill in the art of using and making buffer tubes to specifically use polyphenylene oxide. Just because Hawtof et al. mentions polyphenylene oxide does not mean that one of skill in the art would have been motivated to combine it with a PP-PE

copolymer. "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)." Applicant respectfully requests the Examiner to specifically point out, such as by column and line numbers, where the prior art references would have motivated one of skill in the art of making and using *buffer tubes* to use PPO in a PP-PE copolymer buffer tube instead of using PE.

CONCLUSION

Since none of the references, alone or in combination, disclose or make obvious the invention as now claimed, Applicant respectfully requests the Office to withdraw the pending grounds of rejection and allow the pending claims. If there is any fee due in connection with the filing of this Request for Reconsideration, including a fee for any extension of time not accounted for above, please charge the fee to our Deposit Account No. 18-0013/64671.0480.

Respectfully Submitted,

By 
BRYAN C. BRYNER
Reg. No. 54,008
Rader, Fishman & Grauer, PLLC
RiverPark Corporate Center One
10653 S. River Front Parkway, Suite 150
South Jordan, UT 84095
(801) 572-0185

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